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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,242	08/09/2002	Petrus Henricus Aloysius Nicolaas Kuhn	9424.202USWO	2890

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EXAMINER	
CHORBAJI, MONZER R	
ART UNIT	**PAPER NUMBER**
1744	

DATE MAILED: 10/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/088,242	KUHN, PETRUS HENRICUS ALOYSIUS NICOLAAS	
	Examiner	Art Unit	
	MONZER R. CHORBAJI	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 August 2002*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *09 August 2002* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *08/09/2002*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

This general action is in response to the application filing date of 08/09/2002

Claim Objections

1. Claims 1-10 and 13 are objected to because of the following informalities:

Claim 1, line 4, applicant recites the phrase "characterized in that". According to U.S. patent law practice such a phrase is to be replaced with "wherein". Appropriate correction is required. The same applies to claims 2-10 and 13.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. Regarding claims 1 and 11-12, the phrase "such as" renders the claims indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

4. Claim 3 recites the limitation "the lamp glass" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

6. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 1, 4, 6-8 and 10-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Bureau et al (U.S.P.N. 5,840,257).

With respect to claim 1, the Bureau reference discloses an air freshening device (figure 1: 1 and10) that includes the following: a reservoir (figure 1:1) containing lamp oil (figure 1:6), a wick (figure 1:21), a separate holder for an active component (figure 1:10), heat conducting means (figure 1:17 and col.3, lines 10-12) for heat transport from the wick when burning to the separate holder (central tubular element, 17, is made of metal such that when the wick is lit, element 17 is inherently heated by the wick and heat is transported to the perfume holding area, 16), active component includes a fragrance (figure 2:29) and the heat conducting means (figure 1:17 and col.3, lines 10-12) includes a metal element that is mounted in the vicinity of the wick (figure 1:21 and 17) such that when the wick is burning, the flame heats the metal element (central tubular element, 17, is made of metal such that when the wick is lit, element 17 is inherently heated by the wick and heat is transported to the perfume holding area,16). See col.3, lines 43-47).

With respect to claims 4, 6-8 and 10-12, the Bureau reference teaches the following: the holder forms an integral part of the apparatus (figure 1:1 and 10), at least part of the holder forms part of the heat conducting means (col.3, lines 43-45), the holder is replaceable (col.3, lines 51-52 and col.4, lines 4-8), the apparatus is provided with connecting means to connect the holder to the apparatus (col.4, lines 4-8), at least part of a contact surface between the holder and the apparatus (figure 1:19; wick-supporting tube is part of the apparatus through which heat is transferred to the holder) forms part of the heat conducting means, the holder is provided with one or more openings in the upper part thereof via which openings the active component can evaporate (figure 4:27) and a holder (figure 2:10) for containing a fragrance (figure 2:29) for use in the air freshening.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 2, 5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bureau et al (U.S.P.N. 5,840,257) as applied to claims 1 and 4 and further in view of the USPTO translation of Protect-Sol (FR 1,040,409) reference.

With respect to claim 2, the Bureau reference teaches that the reservoir is provided with a lid holding the wick (figure 1:1 and 23) and a metal element that forms part of the heat conducting means (figure 1:17); however, the Bureau reference fails to teach placing a glass lamp on the air freshening device where in the glass lamp there is mounted a metal element. The Protect-Sol reference teaches placing a glass lamp on top of a reservoir (figure 7:10 and 9) where in the glass lamp (for example, figure 6, 1 and 7) there is mounted a metal element (figure 4:4 or 1) that forms part of the heat conducting means (page 2, lines 10-11). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the air freshening device of the Bureau reference by placing a glass lamp that includes a metal element as taught by the Protect-Sol reference on the air freshening device of the Bureau reference since the removable cup can be attached instantaneously to any article that normally releases heat (page 1, lines 12-15).

With respect to claims 5 and 13, the Bureau reference teaches that the holder (figure 1:10) forms an integral part of the device (figure 1:1 and 10), but fails to teach that the holder forms an integral part of the lamp glass. However, the Protect-Sol reference teaches a holder (figure 4:1) as an integral part of the lamp glass (for example, figure 6:7). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the air freshening device of the

Bureau reference by placing a glass lamp that includes an integral metallic holder as taught by the Protect-Sol reference on the air freshening device of the Bureau reference since the removable cup can be attached instantaneously to any article that normally releases heat (page 1, lines 12-15).

11. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bureau et al (U.S.P.N. 5,840,257) as applied to claim 1 and further in view of the USPTO translation of Frank Ernest Templeman (FR 1,139,960) reference.

With respect to claim 3, the Bureau reference fails to teach mounting a metal element in the lamp glass in the vicinity of and above a burning wick; however, the Templeman reference, discloses placing a metal element (figure 1:2, 7, page 3, lines 9-10 and page 3, lines 13-15) in the lamp above a burning wick. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the air freshening device of the Bureau reference by placing a metallic element in the lamp glass above a burning wick as taught by the Templeman reference so that the heat of the flame from the lamp heats the container 2 and its content for releasing vapors (page 3, lines 12-16).

12. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bureau et al (U.S.P.N. 5,840,257) as applied to claim 1 and further in view of the USPTO translation of Bruckbauer & Goetzst (DE 943,680) reference.

With respect to claim 3, the Bureau reference teaches mounting a metal element (figure 1:17) in the vicinity of the a burning wick, but fails to teach mounting a metal element in the lamp glass above a burning wick; however, the Bruckbauer & Goetzst

reference, teaches placing a shell-like active substance container (figure 2:d) in the lamp glass (figure 2:a) above a burning wick (see unlabeled burning wick in figure 1). As a result, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the air freshening device of the Bureau reference by placing an active substance container element in the lamp glass above a burning wick as taught by the Bruckbauer & Goetzst reference since hot air and the exhaust gases, that flow upward in the lamp cylinder, can exert the greatest possible heating effect on the container and the active substances located therein (page 3, lines 12-15).

13. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bureau et al (U.S.P.N. 5,840,257) as applied to claim 1 and further in view of Martin et al (U.S.P.N. 5,945,094).

With respect to claim 9, the Bureau reference fails to teach the use of a porous wick; however, the Martin reference, which is in the art of air deodorization, teaches the use of a porous wick (col.6, lines 44-45 and figure 1:14). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of the Bureau reference by substituting porous wick means for liquid means in order to allow air freshener wicking into the atmosphere as taught by the Martin reference (col.4, lines 52-55).

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Thompson (U.S.P.N. 5,000,678) reference, the Tendick, Sr. (U.S.P.N. 5,127,825) reference, the Tendick, Sr. (U.S.P.N. 4,892,711) reference, the

Hammons et al (U.S.P.N. 5,840,246) and the Petrulis (U.S.P.N. 2,254,906) reference all discloses the idea of using heat generated by a candle to heat separate deodorizing material.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R. CHORBAJI whose telephone number is (571) 272-1271. The examiner can normally be reached on M-F 6:30-3:00.

16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN KIM can be reached on (571) 272-1142. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Monzer R. Chorbaji MRC
Patent Examiner
AU 1744
10/11/2005

JOHN KIM
SUPERVISORY PATENT EXAMINER